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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/348,566	07/07/1999	JAY S. WALKER	WD2-98-120	5411

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EXAMINER

ZURITA, JAMES H

ART UNIT PAPER NUMBER

3625

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/348,566

Applicant(s)

WALKER ET AL.

Examiner

James Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

A First Office Action rejected Claims 1-102 as anticipated by various commonly-owned patents. Applicant filed a Continued Prosecution Application on 6 August 2002, seeking to disqualify the following commonly-owned patents as prior art under 112(e): Walker et al. (US Patent 6,249,772), Walker et al. (US Patent 6,193,155), Walker et al. (US Patent 5,945,653).

However, the applied references have a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Applicant amended claims 65, 85 and 94 to correct minor errors.

Applicant's arguments with respect to claims 12-14 and 50-53 have been considered but are not persuasive.

Claims 1-24, 26-102 are pending and will be examined.

Response to Arguments

Applicants argue that examiner has not shown a limitation of claim 1, where a person buys a product from a seller at a first price and takes possession of the product at a retailer different from the seller that offers the product for sale at a second price. In response to this argument, the 169 patent discloses that consolidators and travel agencies may serve as second parties for booked airline seats (see Col. 3, lines 20-49). Customers may purchase tickets from agencies or consolidators after they have booked reservations directly with an airline. Consolidators and agents receive commissions from the airlines for their services. The actions may take place over a telephone communication network. Many consolidators and travel agents act as resellers, booking space directly with airlines and selling space at a different price to other agents or consolidators or resellers or bucket shops, who in turn sell the space to travelers at still another price. See also Col. 8, line 55-Col. 9, line 6.

Applicants argue that the 169 patent shows a penalty may be charged if a ticket is not booked. Booking services and payment for services are two different steps. One may book (reserve) space with an airline or service provider and later decide not to pay for the space. However, the 169 patent does not preclude payment of penalties at specific points in the process. In addition, airline practice provides for setting time limits for purchasing tickets, particularly for space that would go unused.

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-11, 15-49, 54-67, 82-84, 87-102 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (US Patent 6,249,772). However, the applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claims 1, 62, 87-95, 101-102, Walker et al. disclose a method of operating a purchasing system, a purchasing system device, a purchasing system apparatus, and a medium storing instructions comprising:

arranging through a communication network (Col. 4, lines 61-64; Col. 15, line 45-Col. 16, line 14) for a buyer to

- (i) purchase a product from a seller at a first price (Col. 1, lines 10-15), and
- (ii) take possession of the product at a retailer, different from the seller (Col. 5, lines 13-51), that offers the product for sale at a second price (Col. 1, lines 10-15);

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receiving from the buyer a payment of an amount based on the first price (Col. 5, lines 5-12); and

sending to the retailer verification information enabling the retailer to authorize the buyer to take possession of the product (Col. 21, line 58 – Col. 22, line 2; Col. 22, lines 55-67); and

arranging for the retailer to receive payment of an amount based on a settlement price in exchange for providing the product to the buyer (Col. 1, lines 11-15; Col. 4, line 65 – Col. 5, line 64; Col. 6, lines 43-57; Col. 15, line 45-Col. 16, line 14; Col. 24, lines 8-21).

As per claims 2-8 and 96-100, Walker et al. disclose the method of claim 1, wherein the settlement price is based on another price (Col. 1, line 51-Col. 3, line 16; Col. 17, lines 7-30; Col. 22, lines 11-33; Col. 24, lines 8-21; all discuss various ways that settlement prices may differ and may be a function of a first or second or nth price).

As per claim 9, Walker et al. disclose the method of claim 1, wherein said receiving payment from the buyer comprises charging a financial account associated with the buyer (Col. 5, lines 13-34; Col. 6 lines 15- Col. 7, line 12).

As per claim 10, Walker et al. disclose the method of claim 9, wherein the payment is received at a time based on when the purchasing system arranges for the buyer to purchase the product (Fig. 7, and related text, Col. 17, line 52-Col. 18, line 42).

As per claim 11, Walker et al. disclose the method of claim 9, wherein the payment is received at a time based on when the buyer takes possession of the product

at the retailer (Col. 11, lines 18-32; Item S8-33 where a customer is charged in a conventional manner, including credit card payment; Col. 15, line 45-Col. 16, line 14).

As per claims 15-18 and 63-65 Walker et al. disclose the methods of claims 1 and 15, wherein said arranging for the buyer to purchase the product comprises:

receiving a buyer offer, including a buyer-defined first price and information about the product, from the buyer (Col. 15, line 45-Col. 16, line 14; Col. 20, lines 50-61 describing buyer offer/bids and seller counter-offers); and

determining if the buyer offer will be accepted (Col. 15, line 45-Col. 16, line 14; Col. 20, lines 50-61; Col. 24, lines 8-21);

product information includes at least one of a product category; a product class, a product feature, a product manufacturer; and a product identifier (Col. 5, lines 13-34; Database 306: item number; Database 216; item number, item description, product manufacturer, product model; Col. 15, line 45-Col. 16, line 14); and

wherein the buyer offer includes a payment identifier (Col. 5, lines 13-34; Col. 6 line 15- Col. 7, line 12; Col. 15, lines 45-63).

As per claims 19-21, Walker et al. disclose the methods of claim 1 wherein the first price is set by the seller (Col. 24, lines 22-29) the first price is set by the buyer (Col. 20, lines 50-61 describing buyer offer/bids and seller counter-offers); and wherein the first price is set by the purchasing system (Col. 5, lines 25-29; Col. 10, lines 15-20; Col. 15, lines 17-27; Col. 20, lines 36-39; Col. 20, lines 50-61; Col. 24, lines 22-29).

As per claim 22, Walker et al. disclose the method of claim 1, wherein said arranging for the buyer to purchase the product comprises evaluating at least one of:

the first price; the settlement price; a seller price; a subsidy amount; a commission amount; and a minimum acceptable price (Col. 1, line 58 – Col. 2, line 15; Col. 3, line 56 – Col. 4, line 6; Col. 5, lines 7-12; all describe ways to create an ultimate price based on various other types of prices in a supply chain for retail goods).

As per claims 23-27, Walker et al. disclose the method of claim 22 wherein said evaluation further comprises evaluating a minimum profit amount (Col. 1, line 58 – Col. 2, line 15; Col. 3, line 56 – Col. 4, line 6; Col. 4, lines 31-59; Col. 5, lines 7-12; all describe ways that minimum and maximum profit amounts are affected at various levels of a retailer supply chain to manufacturers, sellers, retailers and customers.)

As per claims 28-30 Walker et al. disclose the method of claim 22, wherein said arranging for the buyer to take possession of the product comprises selecting at least one product from a plurality of possible products, selecting at least one retailer from a plurality of retailers (Col. 4, line 52 – Col. 5, line 12; Col. 15, lines 45-63).

As per claims 31-38, Walker et al. disclose the method of claim 22, wherein said evaluation comprises: comparing the first price with a minimum acceptable price; and comparing the minimum profit amount to the first price and the subsidy amount less the settlement price, and arranging for a buyer to purchase a product if a first price is at least equal to the minimum acceptable price; and a minimum profit amount is at least equal to the first price and the subsidy amount less the settlement price (Col. 1, line 58 – Col. 2, line 15; Col. 2, lines 32-37 and Col. 3, lines 25-35 concerning subsidy amounts; Col. 3, line 56 – Col. 4, line 6; Col. 5, lines 7-12; all describe ways to create an

ultimate price based comparing and adding or subtracting various other types of prices in a supply chain for retail goods).

As per claims 39-40, Walker et al. disclose the method of claim 1, wherein said arranging for the buyer to take possession of the product comprises sending redemption information to the buyer and receiving from the retailer information related to an attempt to take possession of the product; and sending to the retailer a verification authorizing the buyer to take possession of the product (Col. 5, lines 25-29; Col. 5, lines 45-54; Col. 10, lines 15-20; Col. 15, lines 17-27; Col. 15, lines 45-63; Col. 20, lines 36-39; Col. 20, lines 50-61; Col. 21, line 58 – Col. 22, line 2; Col. 22, lines 55-67; Col. 23, lines 47-Col. 24, line 7; Col. 24, lines 22-29).

As per claims 41-42 and 59-61, Walker et al. disclose the method of claim 1, wherein said arranging for the retailer to receive payment of the settlement price comprises paying the settlement price to the retailer and wherein said arranging for the buyer to take possession of the product comprises selecting a plurality of retailers and the settlement price is paid to the retailer at which the buyer took possession of the product (Col. 4, line 52-Col. 5, line 51; Col. 5, lines 5-12; Col. 11, lines 18-32; Item S8-33 where a customer is charged in a conventional manner, including credit card payment; Col. 15, lines 45-63).

As per claim 43 Walker et al. disclose the method of claim 1, wherein said arranging for the buyer to purchase the product comprises arranging for a seller to sell the product to the buyer, and said arranging for the retailer to receive payment of the settlement price comprises arranging for the retailer to receive payment of the

settlement price from the seller (Col. 4, line 45- Col. 5, line 12; offer/bids and counteroffers in Col. 20, lines 50-61; Col. 15, lines 45-63).

As per claims 44-49, 57, 58 and 84, Walker et al. disclose the method of claim 1, further comprising receiving payment of a subsidy amount from a subsidy provider wherein the subsidy provider comprises at least one of: a manufacturer of the product; a seller of the product; the retailer; and a third party subsidy provider; wherein said arranging for the buyer to purchase the product comprises arranging for a product manufacturer to sell the product to the buyer at a seller price, and said receiving payment of a subsidy amount comprises adjusting a seller amount exchanged with the manufacturer; wherein said arranging for the buyer to purchase the product comprises arranging for the retailer to sell the product to the buyer at a seller price, and said receiving payment of a subsidy amount comprises adjusting the settlement price paid to the retailer; wherein the subsidy amount is variable and further includes a maximum subsidy amount; wherein the subsidy amount is associated with a plurality of transactions performed by the purchasing system (Col. 2, lines 32-37 describing rebates and discount coupons; Col. 3, lines 25-35; Col. 15, lines 45-63; subsidy amounts, rebates, discounts and such may be applied anywhere in the chain from manufacturers/ sellers, retailers and ultimate buyers and recipients of products. Subsidies may include reduction of specific costs such as shipping and delivery).

As per claims 54-56, Walker et al. disclose the method of claim 1, wherein the settlement price is not equal to the second price, wherein the first price is not equal to the second price, wherein the first price is not equal to the settlement price; further

comprising subsidizing the purchase of the product (Col. 1, line 58 – Col. 2, line 15; Col. 3, line 56 – Col. 4, line 6; Col. 4, lines 31-59; Col. 5, lines 7-12; all describe ways to create an ultimate price based on various other types of prices in a supply chain for retail goods; Col. 15, lines 45-63).

As per claim 66, Walker et al. disclose the method of claim 1, wherein said arranging for a buyer to purchase a product comprises evaluating at least one of: the first price; the settlement price; a seller price; a subsidy amount; a commission amount; and a minimum acceptable price (Col. 20, lines 50-61).

As per claim 67, Walker et al. disclose the method of claim 1, wherein said sending to the retailer verification information comprises:

sending redemption information to the buyer (Col. 5, lines 45-54);

receiving from the retailer information related to an attempt to take possession of the product (Col. 23, lines 47-Col. 24, line 7); and

sending to the retailer a verification authorizing the buyer to take possession of the product (Col. 21, line 58 – Col. 22, line 2; Col. 22, lines 55-67).

As per claim 82, Walker et al. disclose the method of claim 67, wherein said receiving payment of the buyer price from the buyer is only performed after said sending of the verification to the retailer (Col. 21, line 58 – Col. 22, line 2; Col. 22, lines 55-62).

As per claim 83, Walker et al. disclose the method of claim 67, further comprising: receiving, after the verification is sent to the retailer, payment of a subsidy amount from a subsidy provider (Col. 2, lines 32-37 concerning rebates and coupons).

Claims 12-14, 50-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (US Patent 6,085,169). See response to arguments, above.

As per claims 12-14, Walker et al. disclose the method of claim 9, wherein said receiving payment comprises receiving payment of an amount based on the first price plus a penalty amount; wherein the penalty amount is imposed when the buyer has not [taken] possession of the product from the retailer within a predetermined period of time or wherein the penalty amount is based on a cost associated with shipping the product to the buyer (Col. 3, lines 30-35; Col. 7, lines 13-18).

As per claims 50-53, Walker et al. disclose the methods of claim 1, further comprising receiving payment of a commission amount from a commission provider; wherein the commission provider comprises at least one of: a manufacturer of the product; a seller of the product; the retailer and the buyer; wherein the commission amount is based on at least one of: a predetermined amount; a percentage of the first price; a percentage of the settlement price; and a percentage of a seller price; wherein said receiving payment of the commission amount comprises adjusting at least one of: the first price; the settlement price; and a seller amount exchanged with a seller (Col. 14, lines 23-40; Col. 19, line 54-Col. 20, line 5; Commission as a fee paid to an agent or employee for transacting a piece of business or performing a service; especially a percentage of the money received from a total paid to the agent responsible for the business).

Claims 68-80 and 85-86 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (US Patent 6,193,155). However, the applied reference has

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a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claim 68, Walker et al. disclose the method of claim 67, wherein the redemption information and the information related to an attempt to take possession of the product comprise a redemption code (Col. 9, lines 26-30 describing redemption codes and identifiers for a gift certificate).

As per claim 69, Walker et al. disclose the method of claim 68, wherein the redemption code is a pseudo payment identifier (Col. 4, lines 12-17 describing secure alias account identifiers; Col. 8, line 65 through Col. 9, line 9).

As per claim 70, Walker et al. disclose the method of claim 69, wherein the pseudo payment identifier is one of a pseudo credit card number; debit card number; and banking account number (Col. 8, line 65).

As per claim 71, Walker et al. disclose the method of claim 69, wherein the pseudo payment identifier is uniquely associated with the purchase of the product by the buyer (Col. 6, lines 44-49; Col. 8, lines 29-34).

As per claim 72, Walker et al. disclose the method of claim 71, wherein said receiving from the retailer the pseudo payment identifier comprises receiving the

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identifier through a credit card processing system (Col. 1, lines 24-30; Col. 1, lines 66-Col. 2, line 13).

As per claim 73, Walker et al. disclose the method of claim 71, wherein the pseudo payment identifier is provided on a voucher, and the retailer sends the voucher to the purchasing system as a record of charge (Col. 5, lines 5-25).

As per claim 74-80, 85 and 86, Walker et al. disclose the method of claim 71, wherein said arranging for the buyer to take possession of the product at a retailer further comprises adjusting a spending limit associated with the pseudo payment identifier (Col. 7, lines 6-28; Col. 10, lines 32-40, discussing that spending limit may be adjusted to show amount spent. In the sale of goods, the amount spent may include price, such as a first price, a second price, and a final or settlement price. Net prices may also be based on average price, or a highest of several prices associated with a product. Price of a product usually also includes taxes, subsidies and penalties).

Claim 81 is rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (US Patent 5,945,653). However, the applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claim 81, Walker et al. disclose the method of claim 67, wherein the information received from the retailer comprises: a sixteen digit pseudo credit card number, including four digits associated with the purchasing system and twelve digits associated with the buyer's purchase of the product; and an expiration date (Col. 13, lines 11-28, and inherently, an expiration date, since most if not all cards have expiration dates, and the expiration date is usually needed for verifying that an account has money available).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

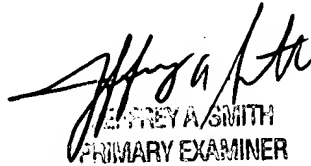
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

JE
James Zurita
Patent Examiner
Art Unit 3625
October 21, 2002


JEFFREY A. SMITH
PRIMARY EXAMINER